IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 6361 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
FEBRUARY 05, 2007.

Heard Shri Purohit, learned counsel for the petitioner and Shri Sambre, learned counsel for the respondent. Considering the nature of controversy, writ petition is heard finally with the consent of the parties.

The suit filed by the petitioner – plaintiff is for declaration and injunction. The plaintiff claims that he is in peaceful possession of shop block No.16 situated at Bhaji Mandi, Itwari, Nagpur. He has also pointed out that present respondent was permitted to occupy a portion in front of said shop block and to store his articles in the shop block. In written statement filed in February 2005, the respondent – defendant has denied this and he has claimed possession and also right to such possession in himself. On 11.8.2005, the petitioner plaintiff moved an

application and he wanted to amend his plaint to incorporate his challenge to two documents filed on record by the defendant to establish his possession. The documents are licence receipts issued by Nagpur Municipal Corporation and also the shop and establishment licence issued by Nagpur Municipal Corporation and the said amendment was opposed by the respondent – defendant. The Court below has rejected that prayer on 17.10.2005 by observing that the amendment application is moved because of stand taken by the respondent - defendant that respondent – defendant is running a shop and having telephone connection in it. It has been observed that for fair disposal of suit, amendment is not at all needed.

On 20.12.2005, Shri Purohit, learned counsel for the petitioner has restricted amendment to paras 7(D) and 7(E) i.e. challenge to documents placed on record by respondent – defendant to work out a right in his favour. He contends that the Court below has erroneously observed that amendment is not necessary.

Shri Sambre, learned counsel for the

respondent contends that the Court below has correctly held that amendment is not necessary. He argues that it was never the case of the petitioner – plaintiff that documents are forged. He further argues that in any case pleadings in relation to other documents in para 7(D) are very vague as no particulars of those documents are given.

After perusal of plaint, written statement and amendment application, it is apparent that the petitioner – plaintiff wants to challenge documents produced by respondent – defendant on record and in order to have his case in relation to those documents on record, the petitioner – plaintiff has moved application for amendment. I, therefore, find that Court below was not justified in observing that the said amendment is not needed for disposal of suit. The challenge to documents which are filed in defence is essential in the matter and therefore the petitioner – plaintiff has moved the application. The contention of Shri Sambre, learned counsel for the respondent that challenge is not specific or documents are not specified, is a challenge which can be considered by the Court below while

appreciating the challenge to those documents on merit. At this stage, merits of the amendment cannot be gone into. I, therefore, find that Court below has failed to exercise jurisdiction available to it in the matter. Accordingly, the application for amendment moved by the petitioner – plaintiff vide Exh. 34 is partly allowed and the petitioner is permitted to add paras 7(D) and 7(E) only to plaint by amending it within a period of three weeks from today. If the plaint is so amended, the present respondent – defendant will be at liberty to effect further consequential amendment in accordance with law within a further period of two weeks. The impugned order dated 17.10.2005 is accordingly quashed and set aside. Writ Petition is partially allowed. No order as to costs.

JUDGE

*GS.